

Division of Securities
Utah Department of Commerce
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Salt Lake City, Utah 84114-6760
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

**STIPULATION AND CONSENT
ORDER**

**ROUND HILL SECURITIES INC.,
CRD #35223;**

Docket No. SD-05-0023

Respondent.

The Utah Division of Securities ("Division"), by and through its Director of Licensing, George Robison, and Round Hill Securities, Inc., ("Respondent"), hereby stipulate and agree as follows

- A. Respondent was the subject of an investigation conducted by the Division into allegations that Respondents violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-1, *et seq.*, as amended.
- B. On May 23, 2005, the Division filed a Petition for Order of Censure, Suspension of License and Imposition of Fine against Respondent.

- C. In lieu of proceeding with a formal action, Respondent and the Division have agreed to settle this matter by way of this Stipulation and Consent Order ("Stipulation"). If approved, the Stipulation will fully resolve all claims the Division has against Respondent pertaining to this matter.
- D. Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action.
- E. Respondent waives any right to a hearing to challenge the Division's evidence and present evidence on Respondent's behalf.
- F. Respondent has read the Stipulation, understands its contents and enters into this Stipulation voluntarily. No promises or threats have been made by the Division, nor by any member, officer, agent, or representative of the Division, to induce Respondent to enter into this Stipulation.
- G. Respondent is represented by attorney Robert Moses and is satisfied with the legal representation it has received.

I. FINDINGS BY THE DIVISION

- H. Round Hill Securities, Inc. ("Round Hill") was incorporated in the state of California in 1993 and was first licensed in Utah on August 14, 1995. Round Hill has requested to terminate its broker-dealer license in Utah.
- I. Round Hill has no branch offices in Utah.
- J. On or about October 1, 2003, the Division of Securities ("Division") received a complaint letter from an attorney of Helen Wyatt ("Wyatt") concerning Stephen Nebeker ("Nebeker"), a broker-dealer agent of Round Hill.

- K. Wyatt's letter alleged that Nebeker had excessively traded Wyatt's account, made unsuitable recommendations, and failed to disclose costs and fees associated with the investments sold to Wyatt.
- L. The Division's investigation into Wyatt's complaint letter revealed the following:

Wyatt; IRA Account

1. On or about October 10, 2000, Round Hill opened an IRA account for Wyatt. Nebeker was the broker-dealer agent of record on the account.
2. From September 2001 to August 2003, Wyatt deposited \$41,403.17 into an IRA account. During that time, the account generated \$18,426.77 in commissions and ticket charges.
3. The portfolio was turned over an average of 9.6 times a year. Given the commissions and other charges, the account would have to earn 44.78% annually to merely break-even.
4. During the 24 months of analysis, Wyatt's account value decreased from an initial deposit of \$41,403.17 to \$13,960 (withdrawals taken by Wyatt were added back to the ending account value to determine the decline in account value).
5. According to trade tickets and confirmations provided by Round Hill, most of the transactions in Wyatt's account were made pursuant to Nebeker's recommendations.
6. Many of the stocks in Wyatt's account were purchased, sold, and in many cases repurchased again, within a matter of days or weeks.

7. According to Round Hill's initial new account form, Wyatt is retired with an approximate annual income of \$50,000, an approximate net worth of \$500,000+ and investment objectives of "growth [and] income."
8. At the time of the account opening, Wyatt was 61; however Wyatt's initial new account form lists the "approximate age" of Wyatt as 50.
9. An updated new account form was completed on March 5, 2002.
According to the updated new account form, Wyatt is retired with an approximate annual income of \$75,000, an approximate net worth of \$1,700,000 and an investment objective is as "growth – trading."
10. Another updated new account form was completed in August of 2002.
According to this updated new account form, Wyatt is retired with an approximate annual income of \$75,000, an approximate net worth of \$1 million and an investment objective of "aggressive."
11. Wyatt's signature does not appear on the initial or updated forms.
12. Wyatt represents that at the time she met Nebeker she informed him that she was a retired widow with a limited net worth and she was only interested in safe, conservative investments because she needed to preserve and safeguard the money her deceased husband had left her for retirement.
13. Round Hill provided a copy of a "happiness letter", dated August 9, 2002 (just prior to Wyatt's account form being updated on August 12th to reflect a new investment objective of "aggressive").

14. The “happiness” letter was sent by Richard Benton (“Benton”), Nebeker’s supervisor, and is a standard form letter Round Hill sends out based on the activity in a client’s account. The letter stated:

“It is the policy of [Round Hill], along with branch managers such as myself, to periodically review client accounts in the interest of confirming that the activity in an account is consistent with the goals, time horizon, financial capability and risk tolerance of the account owner. During a standard review of customer accounts, your accounts have been brought to our attention. First of all, I would like to express my appreciation for your business. You are a valued client and I want to ensure that we maintain open lines of communication. The purpose of this letter is not to restrict the manner in which you conduct your business at [Round Hill], but rather to advise you of the inherent risks associated with your account activity and positions, and to confirm that they are in line with your current investment objectives. Please sign below to confirm that you are aware of the activity and holdings in your accounts_”

15. Wyatt signed this letter on August 12, 2002 (the same day that her account documentation was updated to reflect an “aggressive” investment objective).
16. Despite Wyatt’s signature, the Division deems this letter to be insufficient proof that Wyatt was in fact aware of the activity and the risks associated with said activity. Moreover, this type of trading strategy was not suitable for Wyatt given her specific facts and circumstances.
17. The “happiness letter” is vague and ambiguous in that it does not specifically discuss what type of activity is occurring in Wyatt’s account, why this activity might be problematic, the losses suffered in Wyatt’s

accounts, or the “inherent risks” associated with the activity in her account.

Wyatt; Trust Account

18. On or about December 7, 2000, Round Hill opened an account for the Wyatt Trust listing Wyatt as the trustee and Nebeker as the broker-dealer agent of record on the account.
19. From July 2000 to August 2003, Wyatt deposited \$150,000 into the trust account. During that time, the account generated \$41,167.69 in commissions and ticket charges.
20. The portfolio was turned over an average of 4.92 times a year. Given the commissions and charges, the account would have to earn 17.80% annually to merely break-even.
21. During the 37 months of analysis, Wyatt’s account value decreased from an initial deposit of \$150,000 to \$54,492.03 (withdrawals taken by Wyatt were added back to the ending account value to determine the decline in account value).
22. According to trade tickets and confirmations provided by Round Hill, most of the transactions in Wyatt’s account were made pursuant to Nebeker’s recommendations.
23. Many of the stocks in the account were purchased, sold, and in many cases repurchased again, within a matter of days or weeks.

24. There was no initial new account form for Wyatt's trust account in the account documentation provided by Round Hill. Round Hill did provide three account update forms: the first dated March 12, 2002, the second dated August 12, 2002 and signed by principals on August 12th and 13th, and the third dated August 12, 2002 and signed by principals on August 15th and 16th.
25. According to the March 2002 updated new account form, Wyatt is retired with an approximate annual income of \$50,000 (despite the fact that the March 2002 updated account form for Wyatt's IRA lists Wyatt's annual income as \$75,000) and an approximate net worth of \$1,700,000. Wyatt's investment objective is listed as "growth, trading."
26. According to the August 2002 updated new account forms, Wyatt is retired with an approximate annual income of \$75,000 and an approximate net worth of \$1 million. Wyatt's investment objective is listed as "aggressive growth."
27. Wyatt's signature does not appear on the account update forms.
28. Wyatt represents that at the time she met Nebeker she informed him that she was a retired widow with a limited net worth and she was only interested in safe, conservative investments because she needed to preserve and safeguard the money her deceased husband had left her for retirement.

29. Round Hill provided a copy of a “happiness letter”, dated August 9, 2002 (just prior to Wyatt’s account form being updated on August 12th to reflect a new investment objective of “aggressive growth”). This letter was sent by Benton, Nebeker’s supervisor, and is the same standard form letter Round Hill sent to Wyatt regarding her IRA account.
30. Wyatt signed this letter on August 12, 2002 (the same day that her account documentation was updated to reflect an “aggressive growth” investment objective).
31. Despite Wyatt’s signature, the Division deems this letter to be insufficient proof that Wyatt was in fact aware of the activity and the risks associated with said activity. This letter is vague and ambiguous in that it does not specifically discuss what type of activity is occurring in Wyatt’s account, why this activity might be problematic, losses suffered in Wyatt’s accounts, or the “inherent risks” associated with the activity in her account. Moreover, this type of trading strategy was not suitable for Wyatt given her specific facts and circumstances.
32. According to Nebeker’s CRD disclosure, on November 6, 2003, Wyatt filed a lawsuit in U.S. District Court. On December 18, 2003, Wyatt’s suit was moved to NASD Arbitration. On August 31, 2004, Wyatt reached a settlement agreement whereby Wyatt received \$90,000 from Round Hill.

Failure to Supervise

33. As part of its supervisory system, Round Hill obtained monthly exception reports from Bear, Stearns Securities Corp. ("Bear Stearns"). One such exception report is the "Big Issues" exception report which identifies activity in client accounts that raise a red flag (e.g., account turnover, account performance, commissions generated from an account, etc.).
34. Round Hill provided a summary of the number of Big Issues reports generated for Wyatt's two accounts.
35. During an 18-month period from July 2001 through December 2002, either one or both of Wyatt's accounts were listed on the Big Issues report for 11 of the 18 months. For Wyatt's account, the activities in question on these Big Issue reports were account turnover, account concentration, account performance, and commissions generated from the account.
36. Based on the documentation provided by Round Hill, the Big Issues reports were provided to Terry Emfinger ("Emfinger"), Benton's and Nebeker's Regional Sales Supervisor, and either Benton or Nebeker.
37. Benton and Nebeker were subsequently required to submit an Account Report Form providing specific client information and Nebeker's comments relating to the account.
38. According to Round Hill's Big Issues summary report, Round Hill did not provide Big Issues reports to Emfinger, Benton or Nebeker for six out of the 11 months in which one or both of Wyatt's accounts was/were listed

on the monthly Big Issues report and therefore did not require Benton and Nebeker to submit account reports discussing the relevant activity.

39. According to comments on the summary report, Round Hill's Compliance Department relied on past responses provided by Benton and Nebeker for those six months.
40. Round Hill provided seven Account Report Forms completed by Nebeker and Benton for one or both of Wyatt's accounts. On these report forms, Nebeker was required to provide the client's age; occupation; annual income; liquid net worth; net worth; primary investment objective; the approximate date the client's objectives, income, liquid net worth, and net worth figures were last obtained from the client; the percentage of trades recommended by Nebeker; how often Nebeker spoke with the client; the approximate profit and loss in the account; and an explanation as to account activity and strategies, client sophistication, recent changes in client objectives, changes from past patterns of investing, etc.
41. Four of Nebeker's seven explanations on the report forms indicate that Wyatt is going to be transferring large sums into her accounts at Round Hill and that Nebeker had known Wyatt for many years.
42. Despite Wyatt's representations to the contrary, Nebeker states on four of the seven report forms that Wyatt wants to be aggressive with her account and that she is very knowledgeable and intelligent vis à vis the market and

her investments. Furthermore, it appears that Nebeker copied some of his explanations from previous report forms.

43. In a handwritten statement dated February 7, 2003, Benton stated that with regards to a Big Issues report generated on Wyatt's two accounts, there is a "happiness letter" on file from August 12, 2002. Benton further states that Wyatt "now owns the Eaton Vance Income F[un]d" and that he will "monitor the accounts and if she begins to trade again, I will contact her and obtain a new letter."
44. In the documentation provided by Round Hill, there were only two "happiness letters" addressed to Wyatt: the August 12, 2002 letter signed by Wyatt and discussed above and a November 5, 2002 letter that is signed by Emfinger, but not by Wyatt.
45. In a typewritten statement dated August 6, 2002, Benton states that he had "spoken to Wyatt 4 to 5 times in the last year, and she is aware of the activity, losses and commission credit in the account. All commissions in the account have been regular and below."
46. In another typewritten statement dated November 5, 2003, Benton stated:

"[Wyatt] always knew what was in her account and approximately the price when I spoke to her about her investments. She was in the office at least once a quarter, often more than that. I would speak to her most times when she was in the office, although not always about her investments. I review the trade blotter every day. I know that many of her trades were unsolicited because I took some of [t]hem from her over the phone when Mr. Nebeker was out of the office. We also have "Big Issue" reports that relate to various things in accounts; turnover, commissions, losses, etc.

When these came out I would have Mr. Nebeker write a response to the issue and I would review the account. I would speak to Mrs. W. to discuss her account and on at least two occasions we also had her sign a letter concerning her account. She usually came into the office to sign these or to hand deliver them_”

47. Despite Benton's representation to the contrary, most of the trades in Wyatt's account were solicited trades. Additionally, Benton's representation to the contrary notwithstanding, Round Hill has only provided proof of one "happiness letter" being signed by Wyatt and, as discussed above, the Division deems that letter to be insufficient. There is no other evidence of any additional supervisory or compliance review conducted on Wyatt's accounts.
48. Additionally, Benton's CRD disclosure record indicates that Round Hill initiated an internal review on Benton "because the number of client complaints originating from [Benton's] office between 2001-2003 indicated a lack of supervision." Benton voluntarily resigned while under internal review.
49. The above findings evidence that Benton and Round Hill failed to reasonably supervise Nebeker and as a result Nebeker was able to engage in excessive trading and make unsuitable investment recommendations in Wyatt's accounts.

II. CORRECTIVE ACTION TAKEN BY RESPONDENT

50. Respondent represents to the Division it has undertaken the following corrective actions:
- a. Respondent has implemented changes to its compliance, supervision and audit functions since the time of the events set forth above. These changes remain in place at Respondent's successor.
 - b. The Compliance, Audit and Supervision functions have been separated and departments created and staffed. Respondent's successor firm employs 11 people in the Compliance Department, 10 people in the Supervision Department, and 5 people in the Audit Group.
 - c. Respondent and its successor firm have contracted with a technology firm and purchased and implemented systems that provide additional supervisory tools that capture consolidated data from all clearing firms, mutual fund and annuity companies, and new accounts systems in use. These systems prepare exception reports based on parameters set by the firm, record actions taken by the supervisors and document notes and follow-up regarding issues raised. As a result of these systems, "happiness letters" sent to clients are less generic and more focused on individual account activity.
 - d. Respondent and its successor firm have implemented updated Compliance Manuals and Written Supervisory Procedures, copies of which have been provided to the Division.
 - E. Respondent and its successor continue to review new and existing branch

managers for weaknesses in individual performance. Broker Nebeker had already been terminated by the time the Wyatt complaint was received by Respondent. When the Wyatt complaint came in, the firm determined that the branch would be placed under Internal Review and written notice was sent to the branch on September 25, 2003. The Branch has since closed.

III. CONSENT BY RESPONDENTS

- M. Without admission or denial, Respondent consents to the Division's findings of the foregoing violations of the Act.

IV. REMEDIAL ACTION/SANCTIONS

- N. Respondent via its successor, First Allied shall pay a fine to the Division in the amount of \$25,000.
- O. Respondent and its successors agree to the following supervision requirements set forth below:
1. Upon the second occurrence where a Utah client is listed on the Big Issues report, or any other exception report relating to suitability, account turnover, account concentration, account performance, and/or commissions generated, Respondent's compliance or supervision department will contact the Utah client via telephone. Respondent's compliance or supervision personnel will, at a minimum, be required to do

the following:

- a.) provide the Utah client with the reason the account was flagged;
 - b) indicate to the Utah client whether the red flags on the account are potential violations of securities law and/or firm policy;
 - c) inquire of the Utah client if the client is engaging in the flagged activity(ies) or if the activity(ies) is/are at the behest of the client's broker-dealer agent; and
 - d) offer to provide the Utah client with a profit-loss analysis on the client's account(s).
2. Respondent is required to document these conversations and must make this information available for review by state and federal regulatory agencies.
3. At the time of the third occurrence where a Utah client is listed on the Big Issues report, or some other exception report relating to suitability, account turnover, account concentration, account performance, and/or commissions generated, Respondent's compliance or supervision department will send a letter to the Utah client requiring the client to reply to Respondent's compliance or supervision department. In this letter, Respondent, at minimum, is required to do the following:
- a) highlight in bold font the reason for concern (i.e. the red flag that caused the client's account to show up on the exception report); and

- b) offer to provide the Utah client with a profit-loss analysis on the client's account(s).
- 4. Respondent will forward any customer complaint received from a Utah resident to the Division for three years from the execution of this order.
- 5. Respondent will provide training to agents licensed in Utah and highlight the following:
 - a. Suitability
 - b. Excessive trading
 - c. Supervision of high risk accounts.

V. ASSISTANCE

- P. Respondent agrees to provide reasonable cooperation and assistance to the Division, including testimony (by persons currently employed by Respondent and its successors) in the pending Division actions against Nebeker and/or Benton. Such testimony may be in person or by telephone as required by the hearing officer.

VI. FINAL RESOLUTION AND RELEASE

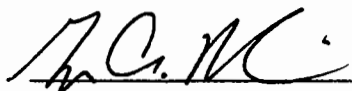
- Q. Respondent acknowledges that this Stipulation and Consent Order, upon approval by the Division Director, shall be the final compromise and settlement of this matter with respect to Respondent, its successors and their respective corporate employees (specifically excluding Nebeker and Benton). Respondent

further acknowledges that if the Division Director does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.

- R. Respondent acknowledges that the Order does not affect any civil or criminal causes of action that third-parties may have against Respondent arising in whole or in part from Respondent's actions.
- S. This Stipulation constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Stipulation in any way.

Utah Division of Securities

Date: 2/13/06

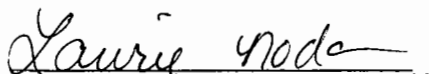
By: 
George Robison
Director of Licensing

Date: 2/10/06

By: 
Round Hill Securities, Inc.

Its: Counsel

APPROVED BY:



Laurie Noda
Assistant Attorney General

ORDER

Based on the foregoing, the Director hereby:

1. Enters, as its own findings, the Findings of Fact described in Section I, above.
2. Orders that:
 - a. Respondent via its successor, First Allied shall pay a fine to the Division in the amount of \$25,000.
 - b. Respondent shall implement the supervision requirements set forth above under Section IV Remedial Actions/Sanctions.
 - c. Respondent shall provide reasonable cooperation and assistance to the Division, including testimony (by persons currently employed by Respondent and its successors) in the pending Division actions against Nebeker and/or Benton. Such testimony may be in person or by telephone as required by the hearing officer.

DATED this 17th day of February, 2006.



Wayne Klein
Director, Utah Division of Securities


BY THE UTAH SECURITIES ADVISORY BOARD:

The foregoing Order is hereby accepted, confirmed and approved by the Utah Securities Advisory Board.

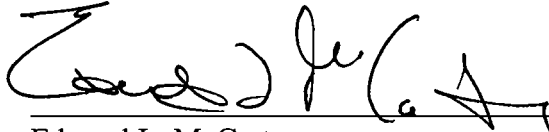
DATED this 28th day of February, 2006.



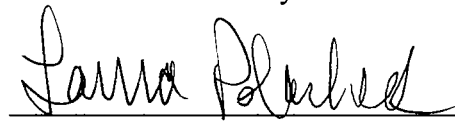
A. Robert Thorup, Chairman



John R. Jackson



Edward L. McCartney




Laura Polacheck

CERTIFICATE OF MAILING

I hereby certify that on the 3rd day of March 2006, I mailed, regular mail, a copy of the foregoing **Stipulation and Consent Order** for Round Hill Securities Inc. to:

Rob Moses
First Allied Securities Inc
140 Broadway 46th Floor
New York NY 10005



Executive Secretary